

**Montana Transportation Commission**  
**May 18, 2005, 2005 meeting**  
**Ninepipes Lodge ~ 41000 Hwy 93, Charlo MT**

draft

**In attendance:**

Bill Kennedy, Transportation Commission Chair, District 5	Sandra Straehl, MDT Rail, Transit & Planning Administrator
Nancy Espy, Transportation Commission Vice Chair, District 4	
Kevin Howlett, District 1 Transportation Commissioner	Loran Frazier, Acting MDT Chief Engineer
Rick Griffith, District 2 Transportation Commissioner	Mike Duman, Assistant FHWA Division Administrator
Deb Kottel, District 3 Transportation Commissioner	Jan Brown, FHWA Division Administrator
Jim Lynch, Director – Montana Department of Transportation (MDT)	Vicky Koch, MDT Civil Rights Bureau Chief
Jim Currie, MDT Deputy Director	Leslie Wootan, MDT DBE Program Manager
Tim Reardon, MDT Chief Counsel	Lorelle Demont, MDT Commission Secretary

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Chairman Kennedy called the meeting to order at 8:10 am. Following the pledge of allegiance was an invocation by Commissioner Howlett.

Commissioner Howlett welcomed the commission and staff to the Flathead and the Salish Kootenai and the county. He introduced a guest at the meeting: Lake County Commissioner Chuck Whitson.

Agenda item 9 was pulled from the agenda; the access control appeal had been resolved.

Please note: agenda items are listed in the order in which they were discussed.

**Agenda item 2: Increased project scope and cost**

*2001 – Access Control – Kalispell – NE*

*30 km Northeast of Glendive – Northeast*

*2002 – Fencing – NE of Craig*

Straehl brought three projects before the commission for reapproval because of increased scope and cost since initial approval. None of the increased costs will affect other projects in the program. Because the letting is planned for 2009, the additional costs can be absorbed – the closer we get to the letting date, the tighter funding becomes. At this point in time, we don't even know what our funding levels will be since reauthorization has not yet been accomplished.

Commissioner Espy also noted that changes may be the result of public input obtained in public meetings.

=> Commissioner Kennedy suggested notifying the affected community of the changes. He said it's important for the public to be informed of two things: one, that their input was included, and two, that those changes cost money. For example, the changes to project *30 km NE of Glendive – NE* added \$1 million to the cost of the work.

Commissioner Espy said that this is important also because the people who attended the first public meeting in a project's development may no longer be in the area once subsequent meetings are held.

Straehl noted that the reason for this policy is to make sure that the commission, as the approving body, wants to absorb the increased cost of a project. Members of the public,

at any given time, are probably only concerned about particular projects that personally affect them, but the commission's responsibility extends to project prioritization and funding approval on a statewide basis.

Commissioner Espy moved to accept staff recommendations to approve the scope changes and additional funds for the three projects; Commissioner Griffith seconded the motion. All five commissioners voted aye.

### **Agenda item 3: State-funded projects**

*Turn Lanes-East of Wolf Point*

*Lewis & Clark Interpretive Site – Sula*

Straehl brought two state-funded projects before the commission for approval. An important note is that no funds will be expended on the *Turn Lanes – East of Wolf Point* project until there is an agreement in place with Columbia Grain.

Commissioner Espy said the *Turn Lanes* project has turned into quite a crisis for the county as well as the city of Wolf Point. A tax reduction was offered to the company to locate their facility there. However, the roads are deteriorating rapidly because of the truck traffic and the company is not willing to assist financially with repairs. Although their presence is a great economic benefit to the community, the local government is now having to require that the grain company either take the tax deduction or provide road maintenance. This is very important to the community.

Commissioner Griffith asked about the discretionary category and how much money is in the category. Currie said the term “discretionary” is probably not the best description of the funding category. The state-funded program has ranged from \$10 million to \$30 million per year, depending on a number of factors. Those funds are mostly used for pavement preservation projects, however, they can also be used on a reactive basis to deal with other needs. The fact that state funds do not have the same restrictions on them as the federal funds do is part of what enables a quicker response.

Lynch said if we don't put this in, the grain trucks will be stacking up on the highway. This is primarily a safety issue on Highway 2. Chairman Kennedy likened it to a situation at the Pompey's Pillar interchange. He said this is probably a much cheaper mitigation than he's seen in other places in Montana.

Commissioner Howlett moved to accept staff recommendations to approve \$375,000 for the *US 2 Turn Lanes – East of Wolf Point* project and \$20,000 for the *Lewis & Clark Interpretive Site – Sula* project; Commissioner Espy seconded the motion. Commissioner Griffith said this is with the caveat that the expenditure be held until the agreement is in place. All five commissioners voted aye.

### **Agenda item 4: Construction projects on state and federal systems**

Straehl said under MCA 60-2-111, any work on state and federal systems done by the cities or counties must be approved by the commission. We contact the local governments twice a year to solicit local projects on state systems to ensure compliance with this statute.

Commissioner Howlett asked if there was any cap on what we could delegate. Straehl said no; it is not our money. He asked if the work would be done by force account or competitive bid. Straehl said all the work will be competitively bid.

Chairman Kennedy asked about the work in Billings. Straehl confirmed that MDT would approve the design work.

Commissioner Griffith moved to accept staff recommendations to approve the projects and delegate its authority to let, award, and administer the contracts for these projects to Richland County and the cities of Billings, Hamilton, Helena, Kalispell, and Missoula, pending concurrence by the chief engineering on the design plans; Commissioner Howlett seconded the motion. All five commissioners voted aye.

### **Agenda item 5: Montana Rest Area Plan status review**

Straehl said the presenter for this item is ill and will not be able to make the presentation today. The item is mostly for informational purposes and is not time-sensitive.

Commissioner Griffith moved to delay the Montana Rest Area Plan status review until the next meeting; Commissioner Espy seconded the motion. All five commissioners voted aye.

Commissioner Griffith inquired about the rest area development around of Butte. Homestake Pass rest area has been closed for a number of years. Currie said part of the delay has been in finding a home for the new rest area. Anaconda has now stepped up to provide a location for a rest area. The construction contract is expected to be let in federal fiscal year 2008

Chairman Kennedy asked about the Custer rest area – about six years ago the county approached the commission for \$1.5 million towards an interpretive center and opening the rest area up round the clock. After BLM and the association got together, they decided to turn down the offer and the dollars, already allocated by the commission, returned to MDT. There was real problem with the Custer rest area's septic system. Is there any planning on that? Straehl said it is still operational. Information on the status of individual rest area is found in the materials associated with the agenda item.

=> Commissioner Howlett asked for an update on Running Buffalo rest area at Fort Peck. He said we need to get that resolved one way or another.

### **Agenda item 6: Special speed zones**

*Secondary 441 – Fairmont Hot Springs/X-81012- Crackerville Road  
MT 24 – Fort Peck Dam*

Frazier presented a summary of the speed zone recommendations. Regarding Crackerville Road, Commissioner Howlett asked if there wasn't some way to make it a uniform 45 mph, rather than 55-45-55 mph. He thought it would seem to take more work and more signs to come up with and implement these types of recommendations. Frazier said this step down and up is to accommodate the curve and adjacent development. He likened it to the recently approved treatment of the curve at St. Ignatius. Commissioner Griffith said this is right at Fairmont Hot Springs. They can have 500-600 people using the facility at any given time, plus there is a subdivision with a golf course in the vicinity. While it is good to be able to get in there at a decent speed, I think the state did a good job with this recommendation. The first step down to 55 mph accommodates the RV park, and the second, the entrance to the subdivision.

Commissioner Espy noted that the recommendations have concurrence from the appropriate local government.

Commissioner Griffith moved to accept staff recommendations to approve the special speed zones for Crackerville Road and Fort Peck Dam; Commissioner Kottel seconded the motion. All five commissioners voted aye.

### **Agenda item 7: Policy proposals**

*Draft commission policy – emergency projects*

Currie said over the last few years we've had a number of emergency projects come up, such as the Milk River Bridge, the slide at Sula and the bridge at Butte. Most recently, we had a culvert failure on the interstate near Glendive. We have kept in communication with the chairman, but have not had a defined policy in place. This policy is an attempt to legitimize the way we've been handling emergency projects so that when emergencies happen we can react quickly to get traffic open, provide for the safety of the traveling public, and get repairs underway.

Lynch said we would still have the same contact with the commission; that would not change. The fact of the matter is that we start acting and spending money before commission approval – this is an attempt to legitimize that.

Commissioner Kottel asked what constitutes an emergency. Currie said it is an event that either closes the highway, poses an imminent danger to the traveling public (e.g. rock falling onto the highway such as at Sula), or significantly impedes the traveling public, to where we need to act quickly to remedy the situation. Commissioner Kottel suggested adding the definition to the policy. => Lynch said we will do that and bring a revised draft back to the commission next meeting.

Commissioner Espy was concerned that this policy might lead to erosion of communication with the commission, perhaps not now but in the future. Commissioner Griffith said it's important for the department to know they have the full backing of the commission in emergency situations. Commissioner Kennedy expressed concern that the project could expand beyond the scope of mitigating the emergency. Lynch said this could be addressed by adding a definition for emergencies. Currie said an emergency fix that exceeds \$700,000 is eligible for ER funding, but it must be to current design standards. For example, the new Milk River Bridge was wider than the one that was torn out by the truck. Duman said the goal is to restore essential travel.

Commissioner Kottel referred to item 5 and asked if this precluded the need for staff to bring the issue back to the commission for ratification. Lynch said yes.

Currie said in the electronic age that we live in, it's easy to send an e-mail such as Lorelle did relative to the most recent emergency. The commission acknowledged that and Commissioner Griffith said that works well. Currie said the commission is meeting at least once a month telephonically, and we always bring relevant information and updates to those meetings.

Currie said there is no intent to reduce communication with the commission; the intent is to proceed in an accelerated fashion. Lynch said the commission could revoke the policy if the department was abusing the delegated authority.

Commissioner Howlett acknowledged the department for doing a great job in responding to emergencies and keeping the commissioners informed. Chairman Kennedy echoed that on behalf of the rest of the commissioners. Commissioner Espy thanked the department and acknowledged the thoroughness with which the department responded. The public relations were very good, and the contractors' reaction was tremendous. => Commissioner Espy wanted the contractors to be apprised of the commission's appreciation for their work. Lorelle will put together a letter of recognition for the commission.

Currie said Glendive District Administrator Ray Mengel and Maintenance Chief Jack Peaslee really stepped up to the plate, also Prince Incorporated was able to put quite a few trucks on it very quickly. This was a good example of partnership.

#### *Management Memo 02-01*

Lynch proposed to revise this policy. The major revision removes the provision to notify the MCA. As a former contractor, Lynch believed this was a private matter between the contractor and MDT. Whether or not the MCA was included would be at the request of the contractor. The process is also streamlined.

Commissioner Kottel asked if one of the reasons for staff having concern over a low bid could be a questionable performance history. Lynch said he thought we could not *not* award a contract to a low bidder unless he/she was disbarred; that is the reason the contractor carries a bond.

Commissioner Kottel asked if the contractor's experience with the type of work was a consideration in the award. Reardon said we do not pre-qualify bidders. At times that is a problem, such as when an unknown bidder submits the low bid, or if the low bidder is a contractor that we've had performance issues with.

There are financial constraints in some circumstances (where the bids are good but we simply don't have the money); this policy does not apply to that situation (see paragraph 2

under procedures). Sometimes we have questions on a bid item and it may be that MDT has made the mistake, e.g. underestimating an item.

This policy usually applies where MDT believes the low bid is unbalanced. Reardon said this doesn't happen very often. Debarment is the only method by which we can disqualify a bidder.

Chairman Kennedy asked for the federal perspective; Brown agreed with Reardon's stance.

Commissioner Griffith moved to accept Director Lynch's proposed updates to management memo 02-01; Commissioner Espy seconded the motion. All five commissioners voted aye.

### **Communication with local governments**

Representative Jeanne Windom of Montana House District 12, which consists of the bulk of Lake County, expressed her appreciation for the work on US 93. The project on MT 35/US 93 in Polson is awesome and amazing. It is incredibly complex – probably more than we realized – yet it is moving rapidly and we see progress every day.

Lake County County Commissioner Chuck Whitson said his first job was working for the department of highways in the 50s on the Yaak Road. He commended the department for moving US 93 improvements along because it is sorely needed. One thing we want to encourage the commission to continue doing is work on secondary roads. In particular, Secondary 354 takes a lot of pressure off 93.

Commissioner Espy said several years ago the commission went to The Dirty Shame and up the Yaak River and she knew exactly what he's talking about!

Senator Jim Elliot, Senate District 7, said the department has the reputation for being the most difficult agency in state government to work with, and that Director Lynch will change this. The Blue Slide Road near Thompson Falls is in a bad state of disrepair and has been for years and years. We have been told it would be repaired or rebuilt, and that has not been done. I don't understand that when a job is scheduled, and the populace is told of such, and then it is put off, I don't understand the rationale or necessity for that. Most recently, the Weeksville project has been delayed because of findings in the geology of the area. My question is why are these not found at the beginning of the investigation into the project?

I also want to talk about Magnesium Chloride (Mag Cl). Mag Cl is put on the roads as a deicer. It is a great deicer but it is terrible on automobiles. It eats wiring, chrome and metal. You may have heard that Mag Cl is less corrosive than salt and that's true. However, there is a difference: salt is dissolved and washed off the vehicle. Mag Cl when it dries, stays on the vehicle and when wet, it is reactivated and its corrosion properties begin again. The Idaho DOT requires that Idaho DOT rigs be washed (particularly the undercarriage) when they come in in the wintertime. That says to me that there is a down side to this product even though it is cheap and it is effective. There is a new product coming down the line that is less corrosive but not cheap. I receive many complaints from mechanics about this. We would like to go back to salt and gravel because it is easier on our vehicles. You have socialized the cost by having the citizens of Montana pay the cost of repairing their automobiles. If there is a pin hole in the wiring, Mag Cl will get into that, it will electrolyze and it will travel through that wiring so that the break in the wiring is not the point of corrosion – it is upstream and downstream from the break.

Other than that, I'm very happy with the job the department does. The projects that have been done in my district have been done well and I want to thank the department for that. Also, Mr. Frazier has been one of the most accommodating people that I've worked with in the department.

Chairman Kennedy referred to a letter he received from Rita Windom of Lincoln County.  
=> Chairman Kennedy said he will get everyone a copy of this. He read from the letter:  
“In March of 2002 I wrote to MDOT as did a number of my constituents of our concerns for a hazardous intersection at US 2, 6<sup>th</sup> St and Mahony Road. The

Commission heard our concerns, approved a project and funded it. Currently, a little over three years later in May of 2005, work is proceeding not only on a new traffic light for that location but an upgrade of the traffic light system through town on US 2. We would like to take this opportunity to say **Thank You**.

We also want to ask about the status of the Swamp Creek East project. It would be helpful if construction plans are in the process of being approved, to have a public meeting in Libby to share with the interested public (and there are many!) what we can expect to happen and when it will occur. We do understand the complexities of this project but we also understand that it needs to be a high priority with MDOT as it has been too long in the development and funding state.

One other project we would like to have addressed is STPS 567-107, 11 km North of Libby – North. The Missoula District report of 8/02/01 indicate that it was ranked 7 but was also a 2001 funded project. The most current report that I received at the MACO district meeting in Polson on May 2, indicates that it is pushed out to 2009+. Where does the funding stand on this project? Again this information would be of interest to the public in Lincoln County.”

Commissioner Howlett acknowledged the concerns about Mag Chloride and said he would bring the issue back to the table for more discussion. He asked Frazier to respond to the question about the back road to Polson. Frazier said it is actively being moved through design. He referred to the Tentative Construction Program and said we had a lot of resistance from the public to our survey crews being allowed to go out and survey; that caused delays.

Frazier referred to an experiment in the Missoula district along MT 200, where one section used salt and gravel, and the other section used Mag Chloride. We received complaints from the public for the condition of the road where salt/gravel was being used.

Lynch said there is a new product that is being tested – a non-corrosive salt.

Senator Elliot said he doesn't dispute the fact that Mag Cl is a great deicer. Are there any statistics that show its use has reduced fatalities? Commissioner Griffith said the one issue we forget about is the health issue. In Butte, our city streets were salted and sanded for years. This resulted in a high PM10 count which contributed to compromised pulmonary health in its residents. It's not just about machine health. We need to weigh both. I know Sodium Acetate is a much better product, but it costs \$18,000 a truckload so is simply not affordable.

Representative Teresa Henry (House District 96) said she came to listen and also to respond to any questions the commission may have of her.

Commissioner Howlett spoke to an issue raised by the Salish and Kootenai Tribes. => He will submit the written letter for the record. => He asked the department to communicate directly with the tribes regarding the speed limit issue. The other issues concern US 93 and the memorandum of understanding, especially issues of access control. Currie asked that the access control issue be brought to the project oversight group.

Frazier said Highway 354 is shown in the TCP as fundable in 2008. The ready date is February 2008. Whitson said it would benefit everyone if this could be moved ahead because it could be used as a detour while US 93 is under construction. Currie said the department is not the body that prioritizes secondary projects. Under a bill passed by the legislature about six years ago, the dollars are earmarked for the financial district and the counties within that district prioritize projects. Projects are completed as funding is available. While it would be nice to move that project ahead, that is not legally our decision to make.

Chairman Kennedy said when we set up the regulations on the secondary roads, we wanted to make sure the counties in the district received a project before we moved on to the second phase. The selection committee can get together and make a change in the priorities.

=> Chairman Kennedy suggested Commissioner Whitson bring the district manager and the county commissioners together and visit about the needs on Highway 354. He later suggested Frazier set up a meeting with the Lake County commissioners to provide the technical details.

Straehl referred to the ready date (the date that the project is completely developed and ready to be advertised for bids.) If the ready date was earlier, it would be clear that the hold-up was funding. The fact that the ready date is not until 2008 would indicate that that is how long it will take for the hundreds of steps to be completed to develop the project before it can be advertised. In other words, it is not always a funding issue.

Chairman Kennedy said there is often curiosity among the counties as to the status of these projects. An update would be helpful.

=> Frazier said he would ask Dwane Kailey to provide Commissioner Whitson a more detailed update.

Senator Elliot talked about funding for the Blue Slide Road being moved to fund work on US 93. Currie said we cannot move funding from the secondary roads category to the US 93 [National Highway System] category. When we nominate projects, we also estimate ready dates. However, at that time we haven't yet done a scope of work review or whatever environmental assessment work is required. We make those ready dates as realistic as possible. You bring up a real point that it does get people's expectations up – they don't understand the process and all the things that affect it, then when things change, then people are upset. An important note is right now we are working without a transportation bill – we don't even know what our funding levels will be. Our funding plans are based on assumptions. If the final bill is different from those assumptions, it may impact project scheduling. There are all kinds of reasons why over the life of a project, things may change.

Commissioner Espy explained that our counties used to each receive funding for secondary roads, but it would take a long time to save enough for a project. By consolidating the funding by financial districts, the counties are able to put money towards the most needy road in their district. We have found it to be very satisfactory.

### **Agenda item 7c**

*Policy “doing business as”*

This is to limit the identity of the contractor to that identified in the bidding process. This prevents a contractor reporting their payrolls under a different name. We did discuss this with the contractors.

Commissioner Howlett moved to accept staff recommendations to approve the policy as presented; Commissioner Griffith seconded the motion. All five commissioners voted aye.

### **Agenda item 8: Access control resolutions**

STPS 282-1(6) – *Intersection Improvements – Montana City* (Jefferson County)

NH 15-4(112)191 – *South Helena Interchange* (Lewis & Clark County)

=> Chairman Kennedy requested we get a letter from Lewis and Clark County to affirm the verbal commitment noted in the agenda.

Commissioner Griffith moved to accept staff recommendations to approve the access control resolutions; Commissioner Kottel seconded the motion. All five commissioners voted aye.

### **Agenda item 10: Letting lists**

Frazier distributed the most recent proposed letting lists for May, June, July, August and September, 2005 with the caveat that we may have to alter these depending on our funding situation. We hope to get geotechnical issues resolved on the Weeksville project in time to let it in August.

Commissioner Howlett moved to accept staff recommendations to approve the letting lists presented; Commissioner Griffith seconded the motion. All five commissioners voted aye.

Commissioner Griffith asked if there is a way to get this ahead of time. Lynch said yes. Commissioner Howlett reminded the commission that these are not new projects; they were approved by previous commissions.

Frazier explained that changes can occur between the time the agenda is published and the meeting. By handing the lists out at the meeting, we are providing the commission with the most current information available. Commissioner Griffith pointed out that projects in the fall lettings may realistically not see any construction until the following year – he wanted communities to be aware of this so they could react accordingly. Commissioner Espy noted that the heading on the lists clearly states that the projects are “proposed.”

### ***Agenda item 11: Certificates of completion***

Commissioner Espy moved to accept staff recommendations to approve the certificates of completion for March 2005; Commissioner Griffith seconded the motion. All five commissioners voted aye.

### ***Agenda item 12: Project change order approval process***

Frazier brought forth an audit recommendation that project change orders be approved by MDT rather than the commission. The change orders would still be brought before the commission for informational purposes only.

Currie asked what would happen if the commission did not approve a change order; nothing – it’s already done. The department is already making the decision and bringing it to the commission after the fact.

Commissioner Kennedy asked if there was a policy regarding change orders. Reardon said we have a policy that offers guidelines for the award of bids, and one for scope creep (policy 12), but we don’t have a sliding scale for change orders. Currie said we have a department policy that allows the districts to award change orders up to \$50,000; change orders above \$50,000 must come to Helena for approval.

Reardon said the reason this comes to the commission is because the project contracts are the commission’s contracts; any amendments to the contract must be brought to the commission.

Chairman Kennedy and Commissioner Griffith expressed concern that there could be opportunity for the department to take advantage of this authority. Commissioner Griffith suggested naming a dollar amount above which the change order needed to be brought to the commission.

Currie explained that we can get in a position of delaying a contractor while we wait to bring this to the commission. This delay can cost us money.

Commissioner Howlett suggested change orders over \$500,000 be brought to the commission chairman and the district commissioner for approval. Commissioner Kottel asked if it would be notification or approval. She suggested ratification as an option although she recognized that certainly begs the question of what happens if the commission disapproves an item. She posed the question, “Does the individual (probably the chief engineer) then become personally liable?” It might be a process without form.

Commissioner Kottel said having to bring the issues to the commission, even if just for ratification, might psychologically put pressure on the department to make decisions judiciously.

Currie said in the heat of construction, changes come up. The contractor wants a quick resolution to the issue so that he can continue working. If we slow a contractor down while



we convene the commission, he can claim us for that delay. Chairman Kennedy said the paragraph of concern was “The department would continue to provide change order data to the Transportation Commission for informational purposes only.”

Chairman Kennedy suggested tabling the item. => Staff will modify the policy and e-mail the revised draft policy to the commissioners for review and suggestions prior to the next meeting.

Commissioner Kottel moved to table the item; Commissioner Espy seconded the motion. All five commissioners voted aye.

### **Agenda item 12b: Change orders**

Commissioner Kottel moved to accept staff recommendations to approve change orders for the month of March 2005; Commissioner Espy seconded the motion. All five commissioners voted aye.

Commissioner Griffith asked about the shrinkage of the material on the Kalispell project; don't we have material samples? Was that overlooked in the design phase? It's such a big number, somebody needs to have a discussion with whoever figured the shrinkage in the first place. Frazier said when we look at borrow material, there are several factors. We don't have a great method for determining how material will shrink. There is somewhat of an art form involved in that based on previous experience.

Commissioner Kottel noted two frequent items on the change order list are “relocation without capacity” and “lighting and traffic signals.” Is there something about those items that tends to generate a lot of change orders? Frazier responded that “relocation without capacity” are big reconstruction jobs, and the nature of the complexity of these jobs is such that there tends to be more change orders. He speculated that lighting projects involve digging for the poles and sometimes we find things that we weren't expecting, like water lines.

The commissioners said the new format of the report was acceptable.

### **Agenda item 1: Wetland projects**

- a. *Woodson Creek Wetland Mitigation* (near Ringling in Meagher County)
- b. *Hahn Ranch Wetland Mitigation* (south of Townsend in Broadwater County)
- c. *Lazy E-L Ranch Wetland Mitigation* (one mile southwest of Roscoe in Stillwater County)
- d. *Gainan Ranch Wetland Mitigation* (four miles west of Boyd in Carbon County)

MDT Environmental Services Bureau Chief Jean Riley referred to the educational sheet in the commission agenda. She explained that if we fill in a wetland, we must replace it. The rules now require us to have the mitigation in place before the construction project proceeds to receive the best crediting. The mitigation ratios depend on the type of wetland and the impacts to it, and the type of mitigation. Obtaining water rights are a big issue. There are grazing restrictions on wetland mitigation projects, which is one of the reasons landowners may decline to participate in the program.

Three things need to be in place for a wetland: soils, plants, water. Monitoring is normally required for five years after the wetland has been installed. The wetland must be protected in perpetuity on the land deed.

Straehl presented four different wetland proposals to the commission:

- Woodson Creek wetland mitigation* project – purchase wetland credits (\$812,500)
- Hahn Ranch wetland mitigation* – feasibility study (\$75,000)
- Lazy E-L Ranch wetland mitigation* – feasibility study (\$85,000)
- Gainan Ranch wetland mitigation* – feasibility study (\$75,000)

Commissioner Espy moved to accept staff recommendations to approve the projects as presented; Commissioner Griffith seconded the motion. All five commissioners voted aye.

### **Agenda item 13: Liquidated damages**

Chairman Kennedy iterated his understanding of the process: the department notifies the contractor of the proposed liquidated damages; if we receive no response from the contractor, MDT brings the liquidated damages to the commission. If there is no objection from the contractor, we are carrying out the terms of the contract. The commission need only take action if a contractor appeals the liquidated damages.

Lynch said liquidated damages may be the result of one or more of several factors:

- A problem with a material not meeting specification and having to correct for that.
- Starting the job too long after the assigned start date.
- Bidding in the possibility of liquidated damages based on known workload.
- Other operational problems that may or may not be the fault of the contractor, e.g. getting utilities moved, problems with a subcontractor.

Lynch said it is not necessarily a black mark against a contractor. Commissioner Espy said the contractors accept the risk of liquidated damages as part of doing business. Duman drew attention to the column marked “work extensions” – if there are conditions that warrant an extension of time through no fault of the contractor, the state is fair and grants it.

Frazier said work extensions would have a change order associated with them.

Commissioner Kottel asked about the difference between suspension of time and extension of time. Reardon said suspension of time means we are not counting time, such as for weather. Extension of time is adding time to a contract. Suspension cannot be done retroactively; it must be performed during the contract.

Commissioner Griffith asked about the liquidated damages for the ferry rehab project. Were there any suspensions? => Frazier will find out and get back to Griffith.

Lynch said liquidated damages are not something the state likes to do. Chairman Kennedy said sometimes the public has the perception that the work “gets done when it gets done” and doesn’t know that there is a defined start date and end date. Currie said LDs are not a punishment to the contractor; they’re intended to cover the cost to the state of continuing to administer the contract.

The commission took no action therefore the following liquidated damages stand:

- a. \$55,272 assessed on project SFCI 94-6(46)218 *4km East of Glendive – East* (Prince Inc. of Forsyth)
- b. \$2,967 assessed on project CM 5899(20) *Brady St/Joshyn St – Helena* (Helena Sand & Gravel Inc. of Helena)
- c. \$15,988 assessed on project NH 0002(505) *D4-Culverts – North* (LSC Inc. of Fort Peck)
- d. \$4,188 assessed on project FDB-MT 0002(524) *Ferry Rehab – Missouri River* (Diamond Construction Inc. of Helena)
- e. \$3,365 assessed on project BR 81001(3) *Frying Pan Gulch – 8km N of Dillon* (Smith Contracting of Butte)

### **Agenda item 14: Commission discussion**

*Update on the work of the Governor’s office in regards to tribal relations*

Lynch – the Governor’s tribal relations office is being very proactive on issues and probably more involved with all the reservations in the state than probably any administration has ever been. We have a meeting Monday with the Governor, his cabinet members and the Salish Kootenai. On the 24<sup>th</sup> we’re going to be on the Rocky Boy Reservation. It’s important to understand it’s not our agenda; it’s primarily the tribal government’s agenda. There’s a meeting with the Crow on the first of May. Every month there’s something going on in relationship to Indian country and issues that they face and how the Governor’s office can help and facilitate and cooperate with them. There is a considerable amount of work that’s being done now that’s never been done in the past, which is really encouraging.

In addition to that, on the department side, we have done things relative to traffic safety. For example, we have alcohol forums and seat belt forums taking place on the reservations. On June 6-7 there will be a two-day tribal safety conscious planning forum that involves not

only tribal leaders but tribal members, law enforcement, and state agencies. The goal is to address traffic safety issues on the reservations in a manner that facilitates tribal leaders and members coming up with the solutions. It is not our intent to force solutions on them. Speakers include representatives from federal highways and other federal agencies from Washington DC. This is the first of its kind sponsored by one of the states. The outcome of the event will be watched.

=> Chairman Kennedy asked for notification of any workshops or meetings that the commission could or should attend. Commissioner Howlett said he plans to attend the tribal forum.

Commissioner Howlett said last meeting he brought up the issue of drivers' training. Now that the legislature approved a graduated drivers license, it seems even more important. Lynch said there are young people on and off the reservation that are not getting the training because of the cost.

#### *Commission duties*

Chairman Kennedy asked what are the expectations of the commission. Do we meet every few weeks and work off the agenda? Or do you want us to be involved in other things around the state that are of interest? What should we be attending? I don't want to miss something.

Lynch said the commission has statutory authority. All the boards and commissions identified in statute have specific functions. Your function is to administer the contracts, to make sure the public is treated fairly, and that monies are distributed correctly. Espy said the commission is "quasi judicial". Reardon confirmed that is correct, per MCA Title 2. Espy said she has followed her gut regarding what to attend. She attends as many public meetings as she can within her district. It is interesting to hear what people have to say about us. The more we know and understand about the department, the easier it is to make decisions that come before us. It is important to make ourselves knowledgeable about these things.

Lynch said you need to look at your authority: there may be situations where you have authority and some where you don't. The other thing to be considered is the cost of travel and per diem. We need to balance those things.

Chairman Kennedy asked Lynch to bring a list of upcoming meetings to the commission so they have awareness of what's coming up. It's helpful in responding to constituents. We can be helpful in promoting good PR around the state – use us to help you.

=> This will be added as a standing item to the agenda.

=> Currie encouraged the commissioners to develop good working relationships with their district administrators – those are the on-the-ground people for you. Espy said her district administrator, Ray Mengel, invites her to attend things he thinks it would be helpful for her to attend, e.g. a meeting about a project with a tribal government. It shows we care enough to come and listen, even though we usually wouldn't make comments or participate in the decision-making process.

Commissioner Howlett said even though the commissioners are not in the position through an electoral process, they have constituents. We don't want to hear or read about something, especially something controversial, after the fact. It perhaps is something that could have been easily addressed at the time if the appropriate parties were there.

#### *Update on reauthorization of the federal transportation act*

Lynch said a great bill came out of the US Senate; it passed 89-11. It will now go into conference committee; we hope soon. Although the media reports Congressman Rehberg as saying Montana will lose with this bill, we believe the Senate bill would be a real good bill for Montana. We would get less and less money under the US House bill. Authority runs out on June 1. Right now we have an extension until July 4.

### *Paid meeting advertisement options*

Currie said several years ago that the department received an audit that we were not meeting the requirements of the open meeting law. We were issuing news releases but they were not always being published. We started buying advertising space. It costs us \$9-10,000 per meeting. The paid advertisements have been detailed, taking up a 4x8 inch space, however, with the advent of electronic media and the web, perhaps not as much detail is necessary. By reducing the ad to a 4x5 inch spot, we can save about 50 percent. We thought we would try that a while and save some money.

Commissioner Kennedy advocated for publishing a news release in advance of each commission meeting. The smaller local papers would be quite likely to pick the information up. The larger papers are less likely to, but the locals are dying for things. The most important thing is that they know that we are coming around the state and listening to needs; we are not just meeting in Helena. We are reaching the local governments via the invitation letters – we had four different local elected officials here today. I'm just trying to make sure we are people-friendly and perhaps at a future date, people will come in to offer public comment. Commissioner Griffith said he didn't think people would read either one, so he thought having an ad and a press release would be helpful.

Lynch said we're mixing terms. We should term any such notice a PSA – public service announcement – not a news release.

Commissioner Howlett said we took action on a number of items today that affect the people in the Missoula district – perhaps we could target the information to the people in the district we're visiting? He wanted to let the commission know he received a letter from Representative Joey Jayne who wasn't able to be here today.

Kennedy said in his experience, the media throws out PSAs. News releases are more likely to be picked up.

=> Lynch will follow-up with Sarah Elliot in the Governor's office.

### **Agenda item 15: Public comment**

Chairman Kennedy opened the meeting to the public for public comment. None was received at this time, however a member of the public came forth later, after the civil rights training.

### **Mandatory civil rights training – Vicky Koch**

Vicky Koch, MDT civil rights bureau chief, and her staff administer several programs.

#### *1. ADA issues*

We are required by the Americans with Disabilities Act to make reasonable accommodation to provide services to all Americans. This may take the form of curb cuts in sidewalks, the height of toilet stools at rest area, or the pressure of the stall door. There are TTY devices at every telephone alongside the Interstate. The road report accessible by phone via 511 is also available on the Internet. However, there are parts of Montana that do not have Internet capabilities. Hearing impaired people have to then use the relay service through Atlanta, GA.

=> Koch reminded the commission that their invitation letters need to include the reasonable accommodation statement.

#### *2. Title VI*

This program ensures that all programs and services offered to the general public by MDT are free from discrimination. Title VI of the United States Code is one of the reasons the commission travels and holds their meetings across the state. Some of the programs and services offered by MDT were identified and discussed, such as entrance and exit ramps enabling minority communities to access the interstate system in the same manner as non-minority communities.

Straehl asked the commissioners to please share any ideas they may have as to how to reach some of the other minorities in the state, such as the Mong community in Missoula, the black community near Great Falls, and the Spanish American community in Billings.

3. *Title VII*

This program ensures that recruitment and selection of permanent and temporary employees is done in a discrimination free manner; that the work environment is free of discrimination and includes procedures for investigation of discrimination complaints. EEO training of all MDT employees is part of Title VII.

4. *EEO compliance*

EEO contract compliance ensures that federal-aid highway projects valued at more than \$10,000 include females and minorities on construction crews. Formal compliance reviews document contractor efforts.

5. *Labor compliance (Davis-Bacon wages on Federal-aid projects)*

Labor compliance ensures that Davis-Bacon wage rates and fringe benefits are paid to highway construction workers on contracts and subcontracts valued at more than \$2,000. Certified payroll monitoring and a formal complaint process document contractor compliance. We monitor contractor payrolls to ensure contractors' employees are being paid the correct wages.

6. *Disadvantaged Business Enterprise (DBE) Program*

This program is responsible for certification of minority, female and other socially and economically disadvantaged owned businesses under the rules and regulations of the federal DBE guidelines. This program, established under ISTEA, is disliked by some folks. It was designed to ensure minority and female-owned companies got their fair share of the construction dollars. It is one of the strings attached to our Federal-aid funding. The program requires us to establish goals and gives us timelines for reaching those goals.

We met our goal until two years ago when the regulations changed. We'd been tracking our accomplishments based on the contract amount on DBE subcontracts. We are now tracking actual payments to individual DBE subcontractors. The combination of actual payments to prime and subcontractors along with the commitments from contracts and subcontracts combine to determine actual goal accomplishment. Koch acknowledged Leslie Wootan for her remarkable work on getting the new tracking system in place so that it will be easier to determine goal accomplishments

*DBE Supportive services*

This is a form of economic development for Montana. We hold numerous workshops ranging from bid estimating and preparing bids, to construction ethics, computer skills and a myriad of other technical skills to assist new growing companies to be able to compete effectively in the world of construction. This program is funded by direct federal funds with no state funding involved. Rebecca Johnson has developed and provides a very comprehensive binder called the *Highway Contractor Reference Guide* to contractors. This binder provides a step-by-step roadmap to doing business with MDT.

Koch invited the commission to direct constituents in their areas who have questions about any of these programs to please contact MDT's civil rights staff at (406) 444-6331.

**Public comment**

Commissioner Howlett introduced Francis Ald of the Kootenai Tribe, staff person from the preservation office. Francis said he is from the community of Elmo, north of Polson on US 93 and MT 28. The community is concerned about the speed limit and safety. Ald proposed the speed limit be lowered. The community is increasing in population. Frazier

confirmed that a speed study is already underway. *(Update as of 5/20/05, the study is complete; MDT is still reviewing the study and we anticipate a recommendation very soon).*

Mr. Ald is concerned that the flashing lights at each end of the community only operate three days a year. He would like them to be turned on on all school days. *(Update: in the mid 1990s, MDT negotiated an agreement with the tribe to invoke a special 45 mph speed limit during the annual Standing Arrow Pow Wow. The bouncing ball beacon (flashing light) is lit on the days that the special speed limit is in effect. During the non pow wow period, the limit is 55 mph. The flashing light may be activated by pedestrians but often is not invoked. MDT will look into educational opportunities aimed at increasing pedestrian usage of the sign. MDT will also look into whether or not instructions are posted at the light.)*

Someone in the community is concerned about a proposal to build bike/ped path from Big Elmo to Big Arm. => Community wants to know how that came forth and who is funding it.

From a business perspective, we have a good relationship with the state of Montana, particularly Steve Platt of MDT.

Vicky Koch will be retiring soon and several people voluntarily praised Vicky for the caliber of her work over the past many years. Vicky responded by saying that she has a staff that she would stack up against any of her counterparts in the other states. They know what they're doing, and they believe in what they're doing.

Commissioner Griffith asked if there is a list of federal assurances we must meet on each project. => He requested a copy of that via e-mail. Lynch said we also have things that the Justice department needs to do otherwise we lose funding.

Commissioner Griffith commended Vicky for taking civil rights and making it fun.

The meeting adjourned at 3:04 pm.

Bill Kennedy, Chairman  
Montana Transportation Commission

Jim Lynch, Director  
Montana Department of Transportation

Lorelle Demont, Secretary  
Montana Transportation Commission